

117TH CONGRESS  
2D SESSION

# S. 3751

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to improve retirement plan coverage for part-time workers.

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IN THE SENATE OF THE UNITED STATES

MARCH 3, 2022

Mr. CASEY (for himself and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to improve retirement plan coverage for part-time workers.

1       *Be it enacted by the Senate and House of Representa-*

2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. IMPROVING COVERAGE FOR PART-TIME WORK-**

4           **ERS.**

5       (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-

6       COME SECURITY ACT OF 1974.—

7           (1) IN GENERAL.—Section 202 of the Employee

8       Retirement Income Security Act of 1974 (29 U.S.C.

1       1052) is amended by adding at the end the following  
2       new subsection:

3       “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-  
4       PLOYEES.—

5           “(1) IN GENERAL.—A pension plan that in-  
6       cludes either a qualified cash or deferred arrange-  
7       ment (as defined in section 401(k) of the Internal  
8       Revenue Code of 1986) or a salary reduction agree-  
9       ment (as described in section 403(b) of such Code)  
10      shall not require, as a condition of participation in  
11     the arrangement or agreement, that an employee  
12     complete a period of service with the employer (or  
13     employers) maintaining the plan extending beyond  
14     the close of the earlier of—

15           “(A) the period permitted under subsection  
16       (a)(1) (determined without regard to subpara-  
17       graph (B)(i) thereof); or

18           “(B) the first 24-month period—

19               “(i) consisting of 2 consecutive 12-  
20       month periods during each of which the  
21       employee has at least 500 hours of service;  
22       and

23               “(ii) by the close of which the em-  
24       ployee has attained the age of 21.

1           “(2) EXCEPTION.—Paragraph (1)(B) shall not  
2       apply to any employee described in section 410(b)(3)  
3       of the Internal Revenue Code of 1986.

4           “(3) COORDINATION WITH OTHER RULES.—

5           “(A) IN GENERAL.—In the case of employ-  
6       ees who are eligible to participate in the ar-  
7       rangement or agreement solely by reason of  
8       paragraph (1)(B):

9           “(i) EXCLUSIONS.—An employer may  
10       elect to exclude such employees from the  
11       application of subsections (a)(4), (k)(3),  
12       (k)(12), (k)(13), (k)(15)(B)(i)(I), and  
13       (m)(2) of section 401 of the Internal Rev-  
14       enue Code of 1986 and section 410(b) of  
15       such Code.

16           “(ii) TIME OF PARTICIPATION.—The  
17       rules of subsection (a)(4) shall apply with  
18       respect to such employees.

19           “(B) TOP-HEAVY RULES.—An employer  
20       may elect to exclude all employees who are eligi-  
21       ble to participate in a plan maintained by the  
22       employer solely by reason of paragraph (1)(B)  
23       from the application of the vesting and benefit  
24       requirements under subsections (b) and (c) of

1           section 416 of the Internal Revenue Code of  
2           1986.

3           “(4) 12-MONTH PERIOD.—For purposes of this  
4           subsection, 12-month periods shall be determined in  
5           the same manner as under the last sentence of sub-  
6           section (a)(3)(A), except that 12-month periods be-  
7           ginning before January 1, 2022, shall not be taken  
8           into account.”.

9           (2) VESTING.—Section 203(b) of the Employee  
10          Retirement Income Security Act of 1974 (29 U.S.C.  
11          1053(a)) is amended by redesignating paragraph (4)  
12          as paragraph (5) and by inserting after paragraph  
13          (3) the following new paragraph:

14           “(4) PART-TIME EMPLOYEES.—For purposes of  
15          determining whether an employee who is eligible to  
16          participate in a qualified cash or deferred arrange-  
17          ment or a salary reduction agreement under a plan  
18          solely by reason of section 202(c)(1)(B) has a non-  
19          forfeitable right to employer contributions—

20           “(A) except as provided in subparagraph  
21          (B), each 12-month period for which the em-  
22          ployee has at least 500 hours of service shall be  
23          treated as a year of service;

24           “(B) paragraph (3) shall be applied by  
25          substituting ‘at least 500 hours of service’ for

1           ‘more than 500 hours of service’ in subparagraph  
2           (A) thereof; and

3           “(C) 12-month periods occurring before  
4           the 24-month period described in section  
5           202(c)(1)(B) shall not be treated as years of  
6           service.

7           For purposes of this paragraph, 12-month periods  
8           shall be determined in the same manner as under  
9           the last sentence of section 202(a)(3)(A), except that  
10          12-month periods beginning before January 1, 2022,  
11          shall not be taken into account.”.

12          (b) CONFORMING AMENDMENT TO INTERNAL REV-  
13          ENUCE CODE OF 1986.—Section 410(a) of the Internal  
14          Revenue Code of 1986 is amended by adding at the end  
15          the following new paragraphs:

16           “(6) SPECIAL RULE FOR CERTAIN PART-TIME  
17          EMPLOYEES.—

18           “(A) IN GENERAL.—In the case of a plan  
19          that includes either a qualified cash or deferred  
20          arrangement (as defined in section 401(k)), a  
21          trust of which such plan is a part shall not con-  
22          stitute a qualified trust under section 401(a) if  
23          the plan requires, as a condition of participa-  
24          tion in the plan or arrangement, that an em-  
25          ployee complete a period of service with the em-

1 ployer (or employers) maintaining the plan ex-  
2 tending beyond the close of the earlier of—

3 “(i) the period permitted under para-  
4 graph (1) (determined without regard to  
5 subparagraph (B)(i) thereof), or

6 “(ii) the first 24-month period—

7 “(I) consisting of 2 consecutive  
8 12-month periods during each of  
9 which the employee has at least 500  
10 hours of service, and

11 “(II) by the close of which the  
12 employee has attained the age of 21.

13 “(B) EXCEPTION.—Subparagraph (A)(ii)  
14 shall not apply to any employee described in  
15 subsection (b)(3).

16 “(C) COORDINATION WITH OTHER  
17 RULES.—

18 “(i) IN GENERAL.—In the case of em-  
19 ployees who are eligible to participate in  
20 the arrangement or agreement solely by  
21 reason of subparagraph (A)(ii)—

22 “(I) EXCLUSIONS.—An employer  
23 may elect to exclude such employees  
24 from the application of subsection (b)  
25 and of subsections (a)(4), (k)(3),

1                                     (k)(12), (k)(13), (k)(15)(B)(i)(I), and  
2                                     (m)(2) of section 401.

3                                     “(II) TIME OF PARTICIPATION.—

4                                     The rules of paragraph (4) shall apply  
5                                     with respect to such employees.

6                                     “(ii) TOP-HEAVY RULES.—An em-  
7                                     ployer may elect to exclude all employees  
8                                     who are eligible to participate in a plan  
9                                     maintained by the employer solely by rea-  
10                                    son of subparagraph (A)(ii) from the appli-  
11                                     cation of the vesting and benefit require-  
12                                     ments under subsections (b) and (c) of sec-  
13                                     tion 416.

14                                     “(D) 12-MONTH PERIOD.—For purposes of  
15                                     this paragraph, 12-month periods shall be de-  
16                                     termined in the same manner as under the last  
17                                     sentence of paragraph (3)(A), except that 12-  
18                                     month periods beginning before January 1,  
19                                     2022, shall not be taken into account.

20                                     “(7) PART-TIME EMPLOYEES.—For purposes of  
21                                     determining whether an employee who is eligible to  
22                                     participate in a qualified cash or deferred arrange-  
23                                     ment or a salary reduction agreement under a plan  
24                                     solely by reason of paragraph (6)(A)(ii) has a non-  
25                                     forfeitable right to employer contributions—

1               “(A) except as provided in subparagraph  
2               (B), each 12-month period for which the em-  
3               ployee has at least 500 hours of service shall be  
4               treated as a year of service,

5               “(B) section 411(a)(6) shall be applied by  
6               substituting ‘at least 500 hours of service’ for  
7               ‘more than 500 hours of service’ in subpara-  
8               graph (A) thereof, and

9               “(C) 12-month periods occurring before  
10               the 24-month period described in paragraph  
11               (6)(A)(ii) shall not be treated as years of serv-  
12               ice.

13               For purposes of this paragraph, 12-month periods  
14               shall be determined in the same manner as under  
15               paragraph (6)(D).”.

16               (c) PRE-2021 SERVICE.—Section 112(b) of the Set-  
17               ting Every Community Up for Retirement Enhancement  
18               Act of 2019 (26 U.S.C. 401 note) is amended by striking  
19               “section 401(k)(2)(D)(ii)” and inserting “paragraphs  
20               (2)(D)(ii) and (15)(B)(iii) of section 401(k)”.

21               (d) EFFECTIVE DATE.—The amendments made by  
22               this section shall apply to plan years beginning after the  
23               date which is 1 year after the date of the enactment of  
24               this Act.

